



FCC DOCKET No. 00-65
SUPPLEMENTAL REPLY DECLARATION OF
SARAH DEYOUNG AND EVA FETTIG

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application by SBC Communications Inc.,)	
Southwestern Bell Telephone Company, and)	CC Docket No. 00-4
Southwestern Bell Communications Services)	
Inc. d/b/a Southwestern Bell Long Distance)	
For Provision of In-Region, IntetLATA)	
Services in Texas)	

SUPPLEMENTAL REPLY

DECLARATION OF

SARAH DEYOUNG

AND EVA FETTIG

ON BEHALF OF

AT&T CORP.

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SUPPLEMENTAL REPLY DECLARATION OF SARAH DEYOUNG
AND EVA FETTIG ON BEHALF OF AT&T CORP.

1. My name is Sarah DeYoung. I am Division Manager - Local Services for AT&T's Southwestern/Pacific Region Local Services and Access Management Organization. I have previously filed a declaration in connection with SWBT's initial section 271 application concerning SWBT's interconnection policies. See Interconnection Declaration of Sarah DeYoung ,filed January 31, 2000, CC Docket 00-04. (DeYoung Interconnection Declaration"). My qualifications are fully set forth therein.

2. My name is Eva Fettig. I am District Manager of Local Interconnection and Network Expansion in AT&T's Local Services and Access Management, Pacific/Southwest Region. My business address is 795 Folsom Street, San Francisco California. I work on a number of UNE, collocation, 911, and network implementation activities. I am involved in negotiating interconnection agreements and analyzing SBC's local regulatory filings, including 271 applications.

3. In 1989, I received a Bachelor of Science degree from the University of Vermont. I majored in Marketing and had concentrations in Finance and Mathematics. In 1994, I received

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a Master of Business Administration degree from the University of Illinois at Urbana - Champaign. I joined AT&T in 1999. Previously, I spent five years in a variety of product management capacities at SBC/Ameritech (formerly Ameritech), including UNE - Transport and UNE - Loops. From 1989 through 1993, I was employed by AT&T as a Supervisor in Access Management.

4. The purpose of this declaration is to update the record on SWBT's interconnection policies, and to respond to SWBT's April 26, 2000, *ex parte* communication (the "April 26th *ex parte*"). In the DeYoung Interconnection Declaration, AT&T explained that SWBT's policies unlawfully require AT&T to establish a minimum of one point of interconnection ("POI") in each local exchange area in which AT&T intends to offer local service. Moreover, for each local exchange area that is not served by a tandem switch that SWBT utilizes to switch local traffic, AT&T is required not only to order or build facilities to the POI in that exchange, but also to order trunk groups to every end office in that exchange. SWBT refuses to permit AT&T to interconnect at the access tandems serving those exchange areas, which is technically feasible and more efficient. DeYoung Interconnection Declaration ¶4.

5. SWBT's April 26th *ex parte* continues to attempt to obfuscate the issues and ignore the concerns raised in the DeYoung Interconnection Declaration. Most significantly, although SWBT states in one paragraph that it is willing to negotiate or arbitrate terms and conditions to govern interconnection at the access tandem, it admits in the very next paragraph that it does not offer interconnection at access tandems "outside the local exchange area."¹ SWBT's latter statement thus confirms that a POI is unlawfully required in each local exchange area. Indeed, the only relevance of SWBT's statement that it is willing to consider

¹ SWBT's April 26th *ex parte* at 2. It is difficult to square the two conflicting statements in SWBT's *ex parte* letter – the only possible explanation is that SWBT means that it will offer interconnection at an access tandem, but only to serve the local exchange area in which that access tandem is located. If that is the offer, it does nothing to reduce the costs associated with the unlawful requirement that there be a POI in each local exchange area.

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interconnection at the access tandem is that it demonstrates that there is no technical impediment to such interconnection.

6. Under SWBT's policy, AT&T must incur the costs to lease (or build) facilities to carry local traffic to and from every exchange that is not served by a local tandem, and the operational expenses associated with ordering, monitoring and augmenting the trunk groups between all of the end offices in that exchange and the end office where the POI is established.

7. AT&T has previously submitted evidence of how this requirement has materially delayed AT&T's entry into the Texas market and how it causes substantial inefficiencies and unnecessary costs. See DeYoung Interconnection Declaration ¶¶ 21-27. Notably, SWBT's April 26th *ex parte* communication has made no effort to rebut or refute this evidence despite the Commission staff's specific request that SWBT respond to AT&T's concerns.

8. The additional costs and inefficiencies stemming from SWBT's requirement that AT&T establish a point of interconnection in each exchange area if there is no tandem in the exchange continue to plague AT&T. In the McKinney calling area -- the area discussed in the DeYoung Interconnection Declaration (*see* ¶¶ 21-27) -- AT&T, as a result of SWBT's unlawful policies, was forced to order [] () DS -1s by the end of 1999 to serve the McKinney calling area. These facilities carry local traffic from AT&T's customers to SWBT's customers and from SWBT's customers to AT&T's customers from the central offices in the McKinney calling area as depicted in the chart attached hereto as Exhibit A.² AT&T estimates that, by the end of this year, it will need to lease an additional [] DS-1s between its switch and the point of interconnection at the McKinney central office -- a [] percent increase over 1999. Moreover, AT&T estimates that it will utilize [] DS-1s in 2001 (a roughly []% increase over the preceding year) and [] DS-1s in 2002 (a []% increase over 2001)) to serve just the McKinney calling area.

² These facilities are represented in the chart at Exhibit A by the dashed line between the box labeled "CLEC" and the point of interconnection at the McKinney central office where traffic leaves AT&T's "network" and enters SWBT's network.

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9. And McKinney is just the tip of the iceberg. We believe that there are at least 300 central offices or remote switches in Texas do not subtend or home to a local tandem,³ an estimate that SWBT has not disputed. In contrast, there are only 29 access tandems in Texas. Thus, there would be an enormous difference in trunking requirements (and thus incurred costs) between interconnecting at those access tandems and SWBT's current policy. If AT&T were able to interconnect at the access tandems it would only have to build or lease facilities to those 29 points. Under SWBT's policies, AT&T must instead lease or build facilities into every local exchange area not served by a local tandem and those facilities must be of sufficient size to enable direct end office trunking from AT&T's switch to all of the central offices in that exchange.

10. Moreover, SWBT's POI requirement has already affected AT&T in areas other than McKinney. Of the [] local exchange areas in Texas that AT&T has plans to enter with a facilities-based offering, we have established to date that at least [] are not served by local tandems. Assuming that each such exchange area requires the same number of trunks that AT&T has had to order for the McKinney calling area, that means that SWBT's policies will force AT&T to order approximately [] DS-1 facilities. The facility connections between the POI and the AT&T switch alone will cost approximately \$[] per month to serve these [] exchanges or almost \$[] per year.⁴ And this estimate understates the true cost to AT&T. In addition to the facilities costs, AT&T incurs the personnel costs associated with augmenting these trunk groups, and the cost of monitoring all of the trunk groups between each end office and the POI within an exchange to ensure that there is sufficient capacity to prevent calls from being blocked.⁵

³ See DeYoung Interconnection Declaration ¶15.

⁴ This estimate assumes that AT&T will incur a cost of about \$100 per month per DS-1.

⁵ These charges are also inequitable: AT&T must pay for the entire facility connecting the POI with AT&T's switch, even though SWBT utilizes this facility to send traffic from its customers to AT&T.

11. Attempting to provide a long term forecast of the costs imposed by SWBT's policies for those areas in which AT&T has planned market entries is impossible because SWBT's LERG does not accurately identify which exchange areas are not served by tandems and thus would require trunking arrangements like those in the McKinney calling area. DeYoung Interconnection Declaration ¶ 26. Even assuming modest expansion, however, it can be seen from the numbers above that the cost to AT&T will quickly rise well into the millions-per-year mark.

12. The inefficiencies and unnecessary costs inflicted on AT&T stem from SWBT's illegal policy of requiring competing carriers to establish a point of interconnection in each local exchange area in which they provide service. As was pointed out in the DeYoung Interconnection Declaration, this Commission has urged courts to reject, as a direct violation of the 1996 Act, incumbent LEC requirements that competing carriers establish a point of interconnection in each local exchange area. See DeYoung Interconnection Declaration ¶ 10. As a result, a number of courts have rejected such requirements as inconsistent with Section 251(c)(2). See id. ¶ 10 n. 15 (citing cases). Indeed, such a policy directly contradicts the Commission's ruling that the statute requires that competing carriers, not incumbent LECs, choose the most efficient (from the competing carriers' perspective), technically feasible points of interconnection.⁶

13. In the April 26th *ex parte*, SWBT attempts to justify its policy by citing language from AT&T's and SWBT's interconnection agreement that it contends demonstrates that AT&T proposed the contract language pertaining to POI. SWBT's statement, however, is highly misleading: the language SWBT relies upon relates to the ability to mix different types of traffic on the same trunk groups; it takes the unlawful POI architecture as a given.⁷ In any event, such

⁶ *Local Competition Order*, 11 FCC Rcd.15499, ¶¶ 172, 209.

⁷ While AT&T did initially agree to SWBT's POI requirement in 1996, it did not propose it. Moreover, at the time AT&T agreed to this provision, AT&T did not have a facilities based strategy. AT&T has since developed such a strategy and has been requesting SWBT to reconsider its policy since as early as last summer.

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an argument is of no avail in the context of a section 271 application. Competing carriers and BOCs may enter into agreements without regard to the requirements of section 251. Such agreements, however, may not be relied upon for section 271 purposes if the agreements do not demonstrate compliance with the competitive checklist. As the Commission has held, a BOC must identify a binding legal commitment to provide interconnection in accordance with Section 251. *See Louisiana II*, ¶ 54 (“a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement or agreements that set forth the prices and other terms and conditions for each checklist item”). If the language in the AT&T and SWBT agreement, or in any other agreement proffered by SWBT, does not evidence a legal obligation to provide interconnection in accordance with section 251(c)(2), SWBT has not provided proof that it meets this checklist obligation. Moreover, as was pointed out in the DeYoung Interconnection Declaration, it is not just the AT&T Agreement, but also the T2A and the SBC-13 State Agreement, that illegally require interconnection in each local exchange area. DeYoung Interconnection Declaration ¶¶ 16-18.

14. Finally, while SWBT is correct that there is now a pending Texas arbitration proceeding in which this issue has been raised, see SWBT April 26th *ex parte* at 2, the fact that there is a pending proceeding addressing the issue does not relieve SWBT of its obligation to demonstrate that, at the time of its section 271 filing with this Commission, it meets the competitive checklist. In any event, AT&T does not even expect to obtain an ALJ ruling in that arbitration until the fall, and a final interconnection agreement incorporating the ALJ’s decision will not be approved until sometime thereafter. In the meantime, as demonstrated above and in the DeYoung Interconnection Declaration, AT&T continues to suffer severe harm.

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I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on May 17, 2000

Sam O. Zeng

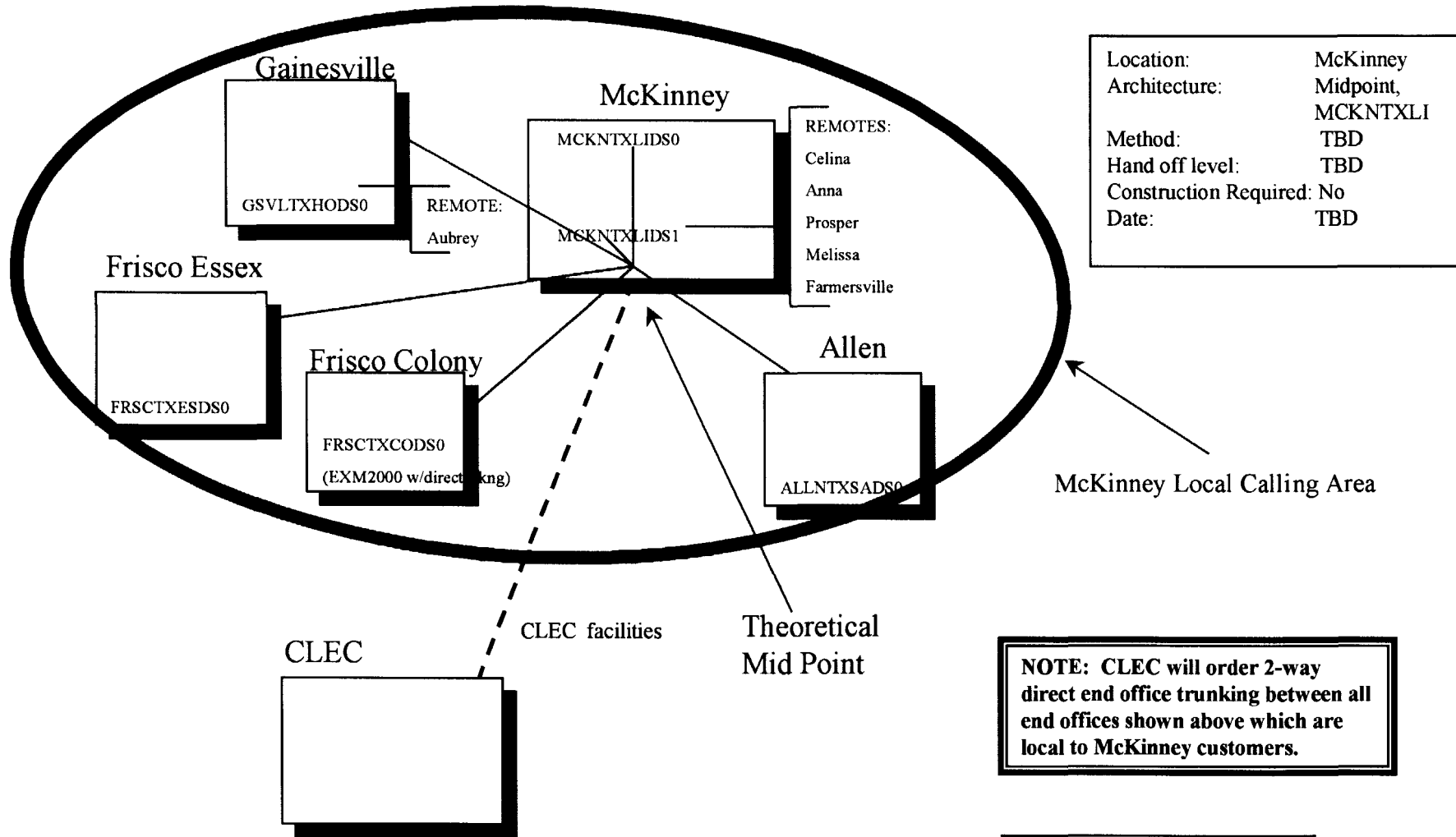
I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on May 17, 2000

Eva Maria Luna

**ATTACHMENT A TO SUPPLEMENTAL REPLY DECLARATION
OF SARAH DEYOUNG AND EVA FETTIG ON BEHALF OF AT&T CORP**

CLEC/Southwestern Bell Interconnection Architecture



SWBT facilities to end offices
local to McKinney

CLEC: _____
Date: _____

SWBT: _____
Date: _____

Signature of both companies provides the necessary documentation for SWBT to move forward with implementation.



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Before the
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In the Matter of)	
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Application by SBC Communications Inc.,)	
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Inc. d/b/a Southwestern Bell Long Distance)	
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Services in Texas)	

SUPPLEMENTAL REPLY DECLARATION OF
C. MICHAEL PFAU ON BEHALF OF AT&T CORP.

I, C. Michael Pfau, first duly sworn upon oath, do hereby depose and state as follows:

1. I am the same C. Michael Pfau who sponsored the Supplemental Declaration of C. Michael Pfau, previously filed in this docket.

I. Scope and Summary

2. In this supplemental reply declaration, I update the information presented in my reply declaration to account for SWBT's reported performance for March 2000. I also provide some additional information regarding the recent regulatory penalty payments reported by SWBT in Texas, based on statements made by SWBT during recent six-month performance measure review proceedings in Texas. Other AT&T witnesses address March performance data related to particular items, e.g., coordinated loop cutovers and OSS.

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3. Before discussing the March data, however, I should emphasize that SWBT still has failed to establish the integrity or reliability of its performance data. Indications of unreliability continue to manifest themselves. AT&T elsewhere has described how its efforts to reconcile performance data with SWBT have continued to uncover further errors in SWBT's reported performance through February in the areas of coordinated loop conversions. *See* Supplemental Declaration of Sarah DeYoung and Mark Van de Water ¶¶ 74-112. AT&T prepared a list of recommendations for addressing the data integrity concerns that have arisen out of the UNE-L data reconciliation efforts (filed with the PUC April 5, 2000), to which SWBT now has replied.¹

4. SWBT's response acknowledges the majority of the data integrity issues raised by AT&T and indicates that SWBT's actions in response to at least some of those issues are incomplete or ongoing. For example, in response to the concern raised by AT&T that manual summarization of raw data has resulted in errors in reported data, SWBT has replied that, as of May 5, 2000, enhancements to SWBT's data collection systems are merely "underway," with an estimated completion date of August 1, 2000.² Further, SWBT's performance reports, posted on the SBC CLEC website, now acknowledge that the Texas UNE-L data reconciliation will require revision to data that SWBT previously has reported.³ SWBT's website report of March data acknowledges

¹ TPUC Project Nos. 16251, 20400, AT&T's Letter to ALJ Regarding the UNE-Loop Coordinated Cutover Process (April 5, 2000). TPUC Project Nos. 16251, 20400, SWBT's Response to AT&T's Letter to ALJ Regarding the UNE-Loop Coordinated Cutover Process (May 5, 2000).

² *Id.* at UNE-L Coordinated Cutovers Action Item List, p. 1.

³ *See* SWBT "Web Site News" as of April 20, 2000, posted at Southwestern Bell Performance Measurements Site, at clec.sbc.com (advising readers that "[r]evisions to No. 114, 114.1, and 115 are pending the Texas PUC ordered reconciliation process").

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other errors as well, including a “[c]omplete revision of February reports” for PM 16, Percent of Usage Records Transmitted Correctly, and PM 19, Daily Usage Feed Timeliness, which affected “most CLECs.” SWBT also reported that it “erroneously reported no sampled calls for February for any CLEC” in several states and areas, including Central and West Texas, and South Texas, on PM 70, interconnection trunk blockage, notwithstanding the great attention that has been drawn to SWBT’s interconnection trunking measures in the Texas 271 process.⁴ In light of its serious, persistent unreliability, SWBT’s reported performance data simply cannot be used to support its section 271 application.⁵

I. SWBT’s Self-Reported March Performance, While Improved Over Recent Months, Is Still Below Summer 1999 Levels, Still Shows Three Times the Expected Number of Parity and Benchmark Violations, and Still Fails the Lax Test of Overall Performance Set By SWBT and the TPUC as an Objective Minimum Prerequisite to Long-Distance Entry

5. After submitting its second 271 application for Texas, SWBT reported its March performance and provided that data to this Commission in Hit or Miss Reports that accompanied an April 21, 2000 *ex parte* submittal.⁶ The chart below adds March data to the table of SWBT’s monthly Tier 2 performance rates that I included in paragraph 5 of my supplemental declaration:

⁴ *Id.*

⁵ The unreliability of the data has been an issue throughout both 271 proceedings. See Pfau/DeYoung Declaration ¶¶ 14-72, Pfau Reply Declaration ¶¶ 2-10, Pfau Supplemental Declaration ¶¶ 13-14 .

⁶ Under the “complete when filed” rule, post-application data should not be accepted into the record of this proceeding. If SWBT determined that its performance through February (the last data available at the time of its new application) might not be sufficient to demonstrate checklist compliance, it could and should have accumulated additional performance data before making its refiling, rather than making its Application an endlessly moving target. The analysis of March data herein is provided in the event that the Commission nevertheless decides to consider March performance data.

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Tier 2 Pass Rate	August	September	October	November	December	January	February ⁷	March
Statewide	84.2	84.6	78.6	79.3	79.4	80.0	81.9/83.1	85.6
Geo. Disagg.	88.5	87.1	86.2	83.9	82.7	82.9	81.0/81.3	85.0

6. SWBT's March results show a higher pass rate on the Texas Tier 2 measures than SWBT had been reported for the previous four months. However, the March results do not reflect the performance that should be required by this Commission, before it could conclude that SWBT is meeting the Act's requirements to provide nondiscriminatory wholesale support and provide CLEC's with a meaningful opportunity to compete. The geographically disaggregated results – which represent SWBT's chosen approach to reporting its performance data and the way in which the data is reported to CLECs and regulators on the SBC CLEC website – show that SWBT has not yet even fully made up the deterioration in performance that has occurred since the summer of 1999. SWBT's March Tier 2 pass rate of 85.0% remains below SWBT's corresponding June through September pass rates – 88.4, 88.8, 88.5, and 87.1.⁸ Notwithstanding the improvement reported by SWBT in March, it continues to report a 15% failure rate on

⁷ The first number shown in the February column is the number that appeared in my supplemental declaration, based on AT&T's analysis of SWBT's statewide data reported in its March 23, 2000 *ex parte* submittal to the FCC. The second number is taken from SWBT's statewide Hit or Miss Report, provided to the FCC in an April 21, 2000 *ex parte* filing. The differences, which remain unexplained by SWBT, appear primarily attributable to a dozen or so z-scores which SWBT included in its Hit or Miss Reports but not in its posted website data or the statewide February data reported with the March 23 *ex parte*. These additional results were either mistakenly omitted from the February data as initially reported, or mistakenly included in the Hit or Miss Reports that accompanied last Friday's *ex parte* submission, as noted in my supplemental declaration. In any event, the differences between the Hit or Miss Reports and the summary of SWBT's reported data in Attachments 2 and 3 are not material.

⁸ The June and July rates for geographically disaggregated data were presented in the declaration that I co-sponsored with Sarah DeYoung in SWBT's initial Texas 271 docket at this Commission. CC Docket No. 00-4, Pfau/DeYoung Declaration ¶ 77. AT&T is not aware of statewide reported SWBT data for June or July 1999.

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these key measures, *three* times greater than the 5% rate to be expected from an ILEC that is providing truly nondiscriminatory wholesale support. As stated in my supplemental declaration, sustained performance around the 95% mark, rather than 85%, should be seen before concluding that SWBT has irretrievably opened the local marketplace to competition.

7. With SWBT's performance through March, it continues to remain the case that SWBT never has passed the one overall performance test that SWBT and the TPUC had agreed upon as a prerequisite to proceeding with a 271 application to this Commission – passing 90% of its Tier 2 measurements for 2 out of 3 consecutive months, based on performance for CLECs in the aggregate. SWBT still never has achieved a monthly pass rate of 90% of these Tier 2 measurements, either on a geographically disaggregated or a statewide basis. Indeed, SWBT's performance through March fails to pass this test even under the unjustifiably lax interpretation advocated by SWBT, which ignores monthly performance and instead calculates an "overall" pass rate by looking at the results for each individual measurement and identifying the percentage of those measurements that achieved a passing z-score two out of the three month period under review. SWBT's Hit or Miss Reports for January through March 2000 show an "overall result" for Tier 2 measures of 84.3% (statewide) and 85.8% (geographically disaggregated).

8. SWBT does not dispute these numbers. AT&T presented this same analysis to the TPUC staff at a May 1, 2000 workshop, where SWBT's Director of Performance Measurements, William R. Dysart, replied that "I can't argue with the numbers. . . . You know, a lot's been talked about this morning about 90 percent, and

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that's the bogey that we committed to in the MOU. And, again, I can't deny any of that that AT&T has presented." TPUC Docket No. 20400, Tr. at 34-35 (May 1, 2000).⁹

Instead, SWBT only could suggest to Texas Commission Staff that SWBT's performance through February and March would pass the 90% Tier 2 test under SWBT's overall result methodology, "[i]f we take out DSL measures, IDSL measures [referring to BRI loop data], and the current measures that we have for 114.1." *Id.* at 39 (emphasis supplied) (Dysart). SWBT's rationale for excluding DSL measures was that they lack an "apples to apples comparison" because to date SWBT has utilized line sharing to provide DSL service and CLECs have not. *Id.* at 37 (Dysart). Yet this fact simply reflects SWBT's discriminatory failure to date to make line sharing available to CLECs, hardly a justification for taking parity violations out of SWBT's reported data. A test of SWBT's overall performance that removed DSL and coordinated loop cutover data from the analysis – two areas in which SWBT's performance required it to withdraw its initial application and commence this second proceeding – would be meaningless. The very suggestion of such an analysis bespeaks SWBT's failure to meet the "bogey that [it] committed to in the MOU." *Id.* at 35 (Dysart).

9. The TPUC, for its part, remains silent on SWBT's failure to pass the performance test that the TPUC negotiated with SWBT in the MOU. Like its comments and reply comments to this Commission on SWBT's first Texas application, the TPUC's comments here make no mention of SWBT's performance against the Tier 2, 90% test. The TPUC neither tries to suggest that SWBT has passed that test (on data through

⁹ Attachment 1 to this Supplemental Reply Declaration includes the portions of the May 1 workshop transcript that are referenced in this declaration.

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March, it is difficult to see how that suggestion could be made) nor offers any reason why it should disregard or excuse failure of the performance test that it previously endorsed.

10. In sum, the March data does not alter the conclusion that I offered in my supplemental declaration: this Commission should be extremely reluctant to approve an application where the state commission has established an objective test of nondiscriminatory performance, the ILEC has accepted that test, failed that test, and the state commission has offered no compelling justification for disregarding the test after the fact.

III. SWBT's Recent Tier 2 Penalty Payments Confirm Poor Performance And Reveal Weaknesses in the Remedy Plan

11. My supplemental declaration (§§ 15-20) also discussed the fact that SWBT very recently reported that it has made Tier 2 penalty payments to the state in the amount of \$472,600 based on its performance for the three months ending January 2000, and \$407,000 for the period ending February 2000. SWBT provided some relevant additional information regarding these payments at the Texas performance measures review workshop on May 1, 2000.

12. I previously noted that, when SWBT first posted its January payment, it also reported a December 1999 Tier 2 payment of \$ 75,000. SWBT later removed that payment from its website report, showing "n/a" for December. Pfau Supp. Decl. ¶ 16, n. 11. At the May 1 workshop, SWBT acknowledged that there was a December Tier 2 assessment in the amount of \$ 75,000, that the removal of that payment from the website was an error, and that SWBT would add that payment back to the website report. TPUC Docket No. 20400, Tr. at 47 (May 1, 2000). Thus, SWBT's chronic Tier 2 violations,

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based on performance for Texas CLECs in the aggregate, for the three-month periods ending December 1999 – February 2000, have resulted in total assessments of \$ 954,600.

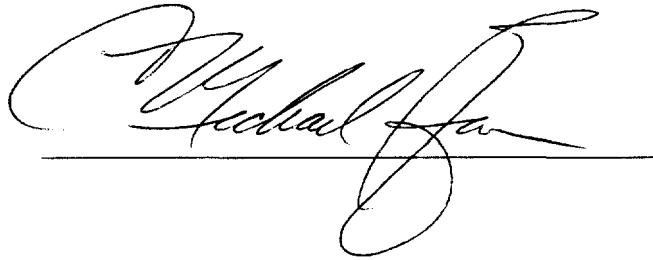
13. This payment of nearly a million dollars in regulatory fines, which are reserved under the Texas plan for chronic, statewide performance failures, should itself lead to the conclusion that SWBT is not delivering the level of nondiscriminatory wholesale support that the Act requires. But the level of SWBT's payments also reflects the truly trivial nature of the Tier 2 assessments that were intended to serve as "super-penalties" under the Texas plan. SWBT's largest payment, the January payment of \$472,600, covered the three-months ending January, when SWBT had reported three-month consecutive violations on 20 Tier 2 measurements. Pfau Supp. Decl. ¶ 17. These totals translate into an average penalty of less than \$25,000 per Tier 2 (3-month) violation. With the competitive advantage offered by providing inferior wholesale support to CLECs across the entire state of Texas for a full calendar quarter, \$25,000 cannot reasonably be expected to provide a meaningful deterrent against parity and benchmark violations for these most customer and competition-affecting measures identified by the TPUC.

Conclusion

14. Through March 2000, SWBT's performance data, and its related performance penalty payments, continue to confirm that SWBT is not providing the nondiscriminatory support for CLECs that the Act requires and that the self-enforcement plan under which SWBT operates in Texas will not create adequate incentives to achieve or maintain the performance that the Act requires.

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on May __, 2000



A handwritten signature in cursive script, appearing to read "Michael J. Fox", is written over a horizontal line.

ATTACHMENT 1

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
PUBLIC UTILITY COMMISSION OF TEXAS
AUSTIN, TEXAS

SECTION 271 COMPLIANCE)
MONITORING OF SOUTHWESTERN) PUC PROJECT
BELL TELEPHONE COMPANY) NO. 20400
OF TEXAS)

WORKSHOP

MONDAY, MAY 1, 2000

BE IT REMEMBERED THAT at 10:06 a.m., on
Monday, the 1st day of May 2000, the
above-entitled matter came on for hearing at the
Public Utility Commission of Texas, 1701 North
Congress Avenue, William B. Travis Building,
Hearing Room 300, Austin, Texas 78701, before
DONNA NELSON, Arbitrator; and the following
proceedings were reported by Janis Simon,
Michelle Bulkeley, and Steven Stogel, Certified
Shorthand Reporters of:

1 their hands)
2 MS. NELSON: Okay. Southwestern
3 Bell, do you have copies?
4 MR. HORN: We Can get additional
5 hard copies, yes. Okay. We'll hand them out in
6 just a minute. I heard from Mr. Drummond
7 Friday, and I guess we were able to get that to
8 you electronically?
9 MR. DRUMMOND: Yes.
10 MR. HORN: Great. Thanks.
11 MS. NELSON: Okay. Let's go ahead
12 and get started with the performance remedy plan
13 discussion, and as we indicated on Friday,
14 AT&T's going to make its presentation first on
15 the motion it filed regarding the performance
16 remedy regarding performance.
17 Go ahead, Mr. Cowlshaw.
18 MR. COWLISHAW: Thank you. This
19 is Pat Cowlshaw for AT&T and TCG.
20 MS. NELSON: Well, I guess before
21 we get started, I'm like -- I must be -- my
22 brain is still stuck in that traffic. Let's go
23 ahead and take an appearance for every company
24 who's represented here, and for right now, let's
25 just start with appearances of the attorneys.

Page 2

1 PROCEEDINGS
2 MONDAY, MAY 1, 2000
3 (10:06 a.m.)
4 MS. NELSON: Okay. Let's go on
5 the record in Project No. 20400, Section 271
6 Compliance Monitoring of Southwestern Bell
7 Telephone Company of Texas, Project No. 22165,
8 Implementation of Docket Nos. 20226 and 20272.
9 These are a series of performance
10 measure workshops, and a schedule was sent out
11 last week. And on the schedule for May 1st,
12 today, is the workshop on the performance remedy
13 plan, including AT&T's filings, and also
14 performance measures relating to UNE and UNE-P,
15 including those relating to provisioning
16 maintenance and repair.
17 And, Southwestern Bell, you had a
18 conference call on Thursday -- on Friday.
19 Southwestern Bell has provided a red line
20 version of their performance measures for
21 consideration today and e-mailed those to all
22 the parties. I'm assuming everybody got a copy.
23 Is there anyone who didn't get a
24 copy of the performance measures?
25 (Those so responded by raising

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1 As people speak, if you would
2 identify yourself for the record, then we'll
3 take appearances as people speak. Let's start
4 with Southwestern Bell.
5 MR. HORN: Tom Horn for
6 Southwestern Bell Telephone Company and Cynthia
7 Malone.
8 MR. COWLISHAW: Pat Cowlshaw and
9 Michelle Bourianoff for AT&T and TCG.
10 MS. HARTLINE: Rina Hartline and
11 Abigail Kramer for Birch Telecom.
12 MS. NELSON: Okay. You're going
13 to need to stand up when you speak, and this
14 room is small. The court reporter needs to be
15 able to hear you.
16 MS. HARTLINE: Rina Hartline and
17 Abigail Kramer for Birch Telecom.
18 MR. WAKEFIELD: Good morning, Your
19 Honor. Jason Wakefield on behalf of MCI
20 WorldCom.
21 MR. DRUMMOND: Eric Drummond on
22 behalf of the CLEC Coalition.
23 MS. NELSON: Okay. And let's go
24 ahead and have the people who are sitting at the
25 table identify themselves at this point, and

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1 then we'll let the audience speak.
2 MR. DYSART: Randy Dysart,
3 Southwestern Bell.
4 MR. LOCUS: John Locus,
5 Southwestern Bell.
6 MR. BERRINGER: John Berringer,
7 Southwestern Bell.
8 MS. EMCH: Marsha Emch, MCI
9 WorldCom.
10 MR. KAGELE: Tim Kagele, Time
11 Warner Telecom.
12 MS. NELSON: And at the break, if
13 you could hand a card to the court reporter, it
14 just makes it easier for them. Okay. And for
15 staff, I'm Donna Nelson.
16 MR. SRINIVASA: I'm Nara
17 Srinivasa.
18 MR. MASON: John Mason.
19 MS. ZACHARIE: Pat Zacharie.
20 MR. DRUMMOND: I heard from -- and
21 I think we may have some other representatives,
22 companies sitting out here today.
23 MS. NELSON: Okay.
24 MR. SIEGEL: Howard Siegel, IP
25 Communications.

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1 MS. KRABILL: Nancy Krabill,
2 NEXTLINK.
3 MR. SANCHEZ: Claudio Sanchez,
4 Mpower Communications.
5 MS. TAUTE: Barbara Taute with
6 Sprint.
7 MR. SAUDER: T.J. Sauder with
8 Birch Telecom.
9 MS. MATLOCK: Donna Matlock, AT&T.
10 MS. YEE: Grace Yee, AT&T.
11 MS. NELSON: Okay. If you haven't
12 identified yourself, and when you -- if you do
13 speak today, please identify yourself for the
14 record. Okay. And there are some people here
15 from the Oklahoma Commission. If you would go
16 ahead and identify yourselves.
17 MR. DAVIDSON: Joyce Davidson,
18 Deputy Director of Oklahoma Corporation
19 Commission.
20 MS. ANDERSON: Marilyn Anderson,
21 Regulatory Analyst.
22 MR. WILT: Steve Wilt, Public
23 Utility Coordinator.
24 MS. WALKER: Shirley Walker,
25 Regulatory Analyst.

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1 MS. NELSON: Thank you, and
2 welcome. Mr. Cowlshaw?
3 MR. COWLISHAW: Thank you. Can I
4 ask Your Honor, do you have -- does staff have
5 available a copy of the -- following up on our
6 April 17th session, we filed on April 24th some
7 additional comments regarding continued
8 backsliding in the review of the new 271
9 application?
10 MS. NELSON: Yes.
11 MR. COWLISHAW: I was going to
12 make reference to the attachment that's at the
13 back of that and --
14 MS. NELSON: Yes, we have that
15 available. Well, I guess we could always use
16 extra copies if you have any.
17 MR. COWLISHAW: What I'm going to
18 pass out are actually copies of exhibits or
19 Attachments 2 through 5 from a supplemental
20 declaration of Mike Pfau that was filed last
21 week at the FCC by AT&T, and Attachment 3 -- and
22 I do that because there's some additional
23 information there, but Attachment 3 in what I've
24 just passed out is the same information, the
25 same document that appears as Attachment 1 to

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1 AT&T's April 24th backsliding filing with this
2 Commission.
3 In the original filing that AT&T
4 made on this subject back on March 2nd, we
5 focused on the Tier 2 measures as reported by
6 Southwestern Bell, those having been the focus
7 of the MOU test and the measures that the
8 Commission has regarded as most customer
9 affecting, most competition affecting and noted
10 that whereas in the July to September time frame
11 Southwestern Bell had been reporting on its
12 geographically disaggregated measures, its
13 complete set of measures including the
14 geographic disaggregation that it does for most
15 provisioning and maintenance measures.
16 But Southwestern Bell had been
17 reporting in the July to September time frame
18 last year in the high 80s by way of a Tier 2
19 pass rate. It was reporting meeting the Z test
20 that had been defined by the Commission in the
21 high 80s, 88 percent or so back in July/August
22 time frame. And that had fallen into the low
23 80s in more recent months and is the time of our
24 original filing, the most recent month that we
25 had available was January when Southwestern Bell

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1 reported that it passed 82.9 percent of its
2 Tier 2 measures in its geographically
3 disaggregated reporting which is the official
4 format in which the data is reported.
5 The follow-up that we filed on
6 April 24th and the data that is reflected in
7 Attachment 3 of the document I've passed out
8 this morning shows that on -- again, on a
9 geographically disaggregated basis the Tier 2
10 measures Southwestern Bell reported in February
11 passing 81.0 percent of those measures. So we
12 are now missing 19 percent, were failing the Z
13 test either on a benchmark or a parity basis as
14 this Commission has set the Z test.
15 This data, I should point out, at
16 the time we had to make this filing, we did not
17 have a hit or miss report available from
18 Southwestern Bell, have not seen a hit or miss
19 report actually through -- for the month of
20 February. And this data was created by taking
21 the posted Web site data, transferring it
22 manually onto a spreadsheet, and then
23 counting -- calculated the number of passes and
24 the number of Tier 2 Z scores.
25 Southwestern Bell has since put

1 customer in competition affecting measures.
2 When -- of course, the other way that it has
3 been discussed to apply that test is to look at
4 each measurement and ask that it pass two out of
5 three months, and if it did, then it gets a yes.
6 And if it didn't, it gets a no, and then add up
7 all the yeses and nos and see what percentage of
8 yeses exist.
9 And you'll recall back in the time
10 of the staff evaluation in the beginning of
11 November, even back then doing the report that
12 way, Southwestern Bell -- I mean, there was one
13 juncture at which the data, if you looked at it
14 that way, Southwestern Bell reported just over
15 90 percent. Of course, staff's recommendation
16 back then was you should look at it the other
17 way, that issue was never resolved by the
18 Commission.
19 Today, if we look at this data
20 through February, even if we apply the
21 Southwestern Bell version of the two out of
22 three month test, for the two out of three
23 months ending February 2000, that test yielded
24 under the Southwestern Bell methodology an 84.8
25 percent pass rate.

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1 out a hit or miss report through March, and they
2 come up with an 81 -- where I am reporting 81
3 percent here for Tier 2 February pass rate,
4 Southwestern Bell reports an 81.3 percent pass
5 rate. So it's -- there's some Z scores in their
6 hit or miss report that don't seem to appear in
7 the reported data, but there's not a material
8 difference. Again, very low 80s through
9 February.
10 There is the test you-all will
11 recall debating last fall how to apply the 90
12 percent test for two out of three months that
13 had been incorporated in the MOU. And
14 obviously, looking at this data that's in front
15 of us, if we're just looking at single month
16 pass rates, it obviously remains the case that
17 Southwestern Bell has never achieved a 90
18 percent pass rate for a month on Tier 2 measures
19 and through February had, in fact, declined the
20 81 percent level.
21 And, indeed, when you look at the
22 data on a statewide basis for the last four
23 months has been reporting missing 20 percent of
24 these measures, missing one out of every five of
25 what the Commission has called the most critical

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1 So where we find ourselves is that
2 we have had looking at -- whether we look at
3 monthly pass rates or whether we look at the two
4 out of three months doing the so-called
5 horizontal calculation that Southwestern Bell
6 had proposed, we look at the month ending
7 January. That two out of three month
8 calculation for Tier 2 measures was 85.3
9 percent. Again, the two out of three months
10 ending February was 84.8 percent.
11 We're now not close to 90 percent.
12 We're below or around the 85 percent vicinity.
13 We have had since we last met March data
14 reported by Southwestern Bell. I suspect that
15 Southwestern Bell will want to talk about their
16 March data and points of improvement in the
17 March data. They did file, as I mentioned, a
18 hit or miss report at the FCC containing their
19 March data on whatever day Good Friday afternoon
20 was.
21 That data will show better
22 percentages for Southwestern Bell than the
23 February data did. It's probably appropriate to
24 recognize that in all of these discussions,
25 we're leaving aside very substantial

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1 disagreements between the companies regarding
2 the reliability of this data, and we're simply
3 taking it at face value. But leaving it aside,
4 what Southwestern Bell reported for March was a
5 Tier 2 pass rate, geographically disaggregated
6 of 85 percent, 85.0. And what they reported for
7 the two out of three month calculation doing it
8 the Southwestern Bell way, the horizontal way,
9 is 85.8 percent for the three months ending
10 March.

11 Both of those numbers, while
12 better numbers than February, leave us not only
13 below the 90 percent that the Commission had set
14 as the objective test of the appropriate
15 performance, but neither of those numbers return
16 yet to the levels that Southwestern Bell was
17 reporting in September and October of 1999 and
18 in the summer months before that. So the --
19 just a couple other observations about that data
20 is presented here in this attachment. Sometimes
21 we get into the business of talking about more
22 than the Tier 2 measures, looking across all the
23 measures.

24 What's of some interest looking
25 here, AT&T broke out the Tier 1 -- those Tier 1

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1 measures that are not Tier 2 measures. Many of
2 them are both, but these are the Tier 1s that
3 are Tier 1 only. And then the diagnostic
4 measures in these last two frames, and what you
5 see if you compare, for example, the
6 two-out-of-three-month column, for the months
7 ending February, where the Tier 2 pass rate for
8 two out of three months was just under 85
9 percent, it would be 84.8. If we look down at
10 Tier 1 only, it's 91.7 percent, and the
11 diagnostic measures, a 96.7 percent pass rate.

12 Well, the diagnostic measures are
13 the measures that Southwestern Bell and other
14 contacts has characterized as redundant of
15 performance on other measures and as performance
16 that shouldn't be counted for penalty purposes,
17 and you can see the difficulty of looking at an
18 all-measure average that includes a very high
19 pass rate on diagnostic measures that have been
20 set up to collect some additional data for
21 informational purposes but the main fact be
22 redundant of other performance. The measures
23 that Southwestern Bell continues to have these
24 Tier 2 violations on are not trivial measures.

25 If we -- on the -- just to take an

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1 example, performance measures, we now have
2 between three and five of the last five months
3 reporting statewide violations for 8dB loops on
4 PM 59; the I-report measures, PM 58, the missed
5 due date measure; and PM 65, the trouble report
6 rate measure. That's statewide parity
7 violations, 8dB loops in all those three
8 categories, provisioning troubles, missed due
9 dates, and trouble report rates, maintenance
10 trouble. So these are not -- I mean, nothing in
11 Tier 2 is trivial in the first place. That's
12 the whole reason that the measures got
13 classified by the Commission as to be in Tier 2.

14 And what we see is, as of
15 February, as of March, Southwestern Bell
16 continues to be well below on its Tier 2
17 measures, the objective test that the Commission
18 set for it and well below on a monthly rate
19 however you look at the test, whichever one of
20 the varying interpretations one might -- where
21 does that -- where does that leave us? And
22 where does that leave us specifically in terms
23 of the remedy plan?

24 And it's AT&T's suggestion first
25 that it would be appropriate for the Commission

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1 at this juncture with a new application pending
2 to hold Southwestern Bell to the MOU
3 two-out-of-three-month test that was the
4 commitment negotiated by the Commission with
5 Southwestern Bell in the memorandum of
6 understanding. And we would hope you would take
7 that request and consider it and apply it in
8 further consideration of Southwestern Bell's new
9 pending 271 application. We think that's an
10 action that's required under the MOU and would
11 be appropriate for the Commission to take.

12 They're just not passing the test
13 that was set to gain your approval. To try and
14 look at it, again -- and frankly if that's not
15 done, I think AT&T at least is doubtful whether
16 any after-the-fact remedy plan is likely to be
17 of effective short or long run if we begin the
18 process by simply looking away from, rather than
19 holding Southwestern Bell to the one objective
20 performance test that was set in the MOU. But
21 if we go to the remedy plan, what we see is that
22 under the T2A Southwestern Bell is reporting
23 its -- it's supposed to report its aggregate
24 Tier 1/Tier 2 payments on the Web site. And for
25 the month of January and for the month of

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1 February, Southwestern Bell reported paying
2 Tier 2 penalties. Payments based on January
3 performance were in the -- approximately
4 \$460,000. The payments for performance through
5 February were, again, over \$400,000.

6 There's a -- when Bell first
7 reported these payments, there was a \$75,000
8 payment noted for December in the -- when the
9 table was updated to add the February payment,
10 the December payment disappeared, and n/a was
11 written in its place. And so we don't know what
12 the reason for that is, but one way or the
13 other, there's been either close to 900,000 or
14 960,000 in Tier 2 payments by Southwestern Bell
15 based on its performance to date.

16 We have questions that we would
17 like hopefully this forum to explore. These
18 were the first Tier 2 payments made, and whereas
19 we had at least a pass by Telcordia at looking
20 at -- not real data but some aggregate data and
21 a hypothetical calculation of Tier 1 damages in
22 one of their supplemental reports last year,
23 we've had no examination of how the Tier 2
24 payments are being calculated. And so when we
25 see this 460- and the \$400,000 payment, I think

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1 this would be valuable for the Commission and
2 for all the participants in this process to have
3 an understanding of how that's being calculated.

4 Through January there were some 20
5 Tier 2 measures that had been in violation for
6 three consecutive months. Did the 460,000.
7 They got paid in January. Did that -- was that
8 a payment for all 20 of those mismeasures? Were
9 there some measures that Southwestern Bell
10 thought it was inappropriate for them to have to
11 pay; and so we're only seeing a part? But it
12 would be very useful in terms of understanding
13 the operation of the remedy plan to know how the
14 penalties that have been paid to date were, in
15 fact, calculated with reference to particular
16 performance measure violations and answering
17 what happened about 75,000.

18 When we look at the Tier 1 column,
19 at the same time, over the same period of time
20 that Southwestern Bell has now reported in the
21 vicinity of 900,000 in Tier 2 payments, they've
22 reported a total Tier 1 damages payments of
23 \$13,000. And for the time period ending in
24 January, at the same time that they had paid
25 460,000 in Tier 2 payments to the state for

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1 chronic violations to the industry as a whole,
2 the payments to CLECs under Tier 1 for that same
3 period of time were \$3,250.

4 And so we're seeing very, very
5 small Tier 1 damages being paid. At the same
6 time, Southwestern Bell is incurring what --
7 much more substantial Tier 2 penalties. The way
8 the remedy plan was set up, the Tier 1 penalty,
9 the Tier 1 damages happened immediately, first
10 month of violation to a CLEC. The Tier 1
11 damages escalate with succeeding months'
12 violations. The Tier 2 do not. There's no
13 escalation in Tier 2.

14 So what one would have expected
15 was the -- a build up in Tier 1 payments if
16 there was problem performance, some expectation
17 maybe that the Tier 1 payments would remedy the
18 situation, the performance problem would go
19 away. And only when a problem got big and the
20 Tier 1 payments weren't adequate to stop it,
21 would we see the so-called super penalty of
22 Tier 2 kick in. And what we're seeing is kind
23 of a flip-flop. That leads us to make a couple
24 of -- oh, I'm sorry.

25 MS. NELSON: Wasn't that -- the

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1 way you've outlined the performance remedy plan,
2 wasn't that based on the vast majority of CLECs
3 with heavy volume, having their performance
4 captured under the T2A and both Tier 1 and
5 Tier 2?

6 MR. COWLISHAW: Well, it
7 certainly -- I mean, I don't know whether
8 Southwestern Bell is reporting in Tier 1
9 liquidated damages that it's paying -- if there
10 are liquidated damages that it's paying under
11 agreements other than the Tier -- the T2A. But
12 certainly one possible explanation for some
13 amount of discrepancy is that you have
14 performance still going on for parties who are
15 not under Attachment 17 of the T2A, and so
16 they're not in Tier 1, if that's the way that's
17 being reported. And, yet, their performance is
18 being captured under Tier 2 because that was --
19 because that's part of the remedy plan that all
20 CLECs performing should be capturing under Tier
21 2, whether they're in Tier 1 -- in T2A or not
22 with that very limited exception that I don't
23 think there are any applications of yet.

24 So -- but with the numbers that
25 have been reported of parties -- CLECs opting

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1 into the T2A and opting into it back in the
2 October -- even the October time frame right
3 after the October 13th approval, it is at least
4 surprising that we're not seeing -- or at least
5 would be something that I would think that the
6 Commission would want to look at to see, "Is
7 that the explanation?" If that's the
8 explanation, that 100 percent of these penalties
9 or damages or performance that's caused in the
10 Tier 2, is caused by parties that are out of the
11 T2A, and that's why there's no Tier 1. Well,
12 that's an explanation. But with more and more
13 parties in the T2A, we would expect the pattern
14 to be more, I think as I described in the T2 --
15 the Tier 2 would be the last resort penalty.
16 And you would be concerned if the Tier 1s were
17 not being paid.

18 Other problems that may be causing
19 the Tier 1, and it's led to some of our
20 recommendations on the remedy plan, are simply,
21 one, when you look at the -- on CLEC's
22 performance reports, many of them we're not
23 seeing a Z score calculated when the data points
24 are below 10. Sometimes I think that happens
25 for some people still below 30, but certainly

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1 below 10.

2 The remedy plan provides that
3 damages may be payable on transaction volumes
4 below 10, and so a question is: How is
5 Southwestern Bell applying the remedy plan at
6 present to transaction -- to CLECs who are
7 having transaction volumes below 10? Is there a
8 performance that when built up into the
9 aggregate is resulting in these Tier 2 payments
10 but which is not resulting in Tier 1 payments
11 because, for whatever reason, that mechanism is
12 not engaging or not appropriately engaging to
13 result in the Tier 1 damages on the very small
14 volumes.

15 We have recommended not only based
16 on this data that we're looking at here but out
17 of concerns that go back into the fall, and the
18 questions that the FCC originally had about the
19 nascent competition and the small volume of
20 CLECs and the CLECs who are in an entry mode on
21 a particular service, which may be in small
22 volumes for a while, that one way to try and
23 improve this plan would be to set some sort of
24 minimum per measure -- per measurement
25 liquidated damage level. The amount of -- you

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1 know, for Southwestern Bell -- when we're
2 looking at -- we have -- I think Tier 1 payments
3 one month totaled \$450. I mean, it's hard to
4 imagine that having an impact. It's hard to
5 imagine that even justifying the effort that
6 went into Southwestern Bell figuring out paying
7 it, and to have a liquidated damages plan that
8 will, in fact, operate as a first line of
9 defense against backsliding, we have made a
10 recommendation. There's certainly various
11 approaches you could take to coming up with a
12 number, but we have made a recommendation that
13 the Commission establish in and see if we can
14 bring Southwestern Bell into agreement on
15 setting a minimum Tier 1 damages per measurement
16 quantity that would have a more meaningful
17 immediate impact.

18 The experience under Tier 2 makes
19 one think that it may be important to, in fact,
20 put some escalation into Tier 2 for here -- for
21 there has been none. What we see is 460,000 one
22 month, 400,000 the next month. That's a -- you
23 know, presumably a level of damages that
24 Southwestern Bell wouldn't want to sustain, but
25 relative to what's at stake in these markets, it

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1 remains a very, very minor amount. And to have
2 the possibility of chronic industry-wide parity
3 violations, benchmark violations persist with no
4 change in the monetary sanction I think raises a
5 concern that we do need some escalation there.
6 I guess a final thought I would throw out is, we
7 have found -- AT&T has in its -- and this is old
8 and I hope not a sore subject -- in our
9 contract, a remedial plan obligation with
10 Southwestern Bell, various kinds of performance
11 trigger a remedial plan obligation.

12 That's something that got dropped
13 out of the remedy plan in the process of
14 creating the T2A, and it remains our view that
15 it is useful. And the remedial plans that
16 Southwestern Bell puts together are not big
17 elaborate documents. They're one-page forms
18 that reflect the work they've done to try and
19 ascertain what the cause of the problem was and
20 at least for measures that fall into a Tier 2
21 penalty level or maybe a Tier 1 damages where it
22 runs for two months and the Tier 1 damage the
23 first month didn't take care of it, would be
24 valuable for the Commission to reconsider.
25 Having a remedial plan obligation at least

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1 causes Southwestern Bell to communicate with a
2 CLEC a finding as to what this problem is or in
3 case of Tier 2 with the CLEC community and with
4 the staff what the problem is and, okay. They
5 work on that, and either it fixes the problem or
6 it doesn't, or it gives us something to hold
7 against them. "Okay. You said this was the
8 problem. Have you fixed that problem yet?"

9 And so in terms of getting what
10 this ought to all be about, performance not
11 penalties, some reconsideration of the remedial
12 plan would in our view be appropriate. I would
13 say that, you know, when AT&T is confronted with
14 this question now in other venues, it's giving
15 consideration to a wholesale different approach
16 than the per occurrence approach that we've
17 worked into in Texas.

18 But given the plan that we're here
19 with and given the remedy plan that we've
20 developed, the Commission has developed in
21 Texas, the kind of changes that I've outlined
22 are recommendations that we think would help us
23 have a better chance at getting some impact out
24 of the remedy plan.

25 MR. SRINIVASA: Let me understand

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1 something. When you state the remedial plan,
2 are you referring to route cause analysis? Say,
3 for example, damages that occurred for two
4 consecutive months going in and finding out why
5 that happened, establishing the root cause?

6 MR. COWLISHAW: Yeah. I think
7 it's probably the same term. Randy can speak to
8 it in the -- the name that it's given in the
9 AT&T agreement is remedial plan. It's a
10 document that displays the results on the
11 measure that created the violation that
12 triggered the obligation to report something,
13 and a brief statement of what Southwestern Bell
14 found the route cause to be of the problem or it
15 didn't find any cause and what action is either
16 proposed to be taken on what schedule or has
17 already been taken to address it.

18 MS. NELSON: Okay. I had
19 originally anticipated having all CLECs present
20 at this point, which I'm still willing to do,
21 but I guess I would like to hear Southwestern
22 Bell's response. And I think that might get the
23 ball moving forward a little more quickly, and
24 then other CLECs can pitch in and give their
25 viewpoint, too. Mr. Horn?

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1 MR. HORN: Thank you. I just
2 wanted to start off with a few comments. And
3 then with respect to some of the specifics of,
4 of course, Mr. Dysart, and we have Mr. Locus who
5 is better to be -- more qualified. I would like
6 to put try to put in context what the view
7 review of the remedy plan is really all about,
8 what was contemplated by the T2A, what was
9 contemplated by the MOU in this respect. And in
10 Attachment 17, specifically, Section 6.4, 6.5,
11 and 6.6, it's outlined there what is to take
12 place, what the expectations are in the
13 six-month review, and that's what we're really
14 all about right now and will be over the next
15 several days.

16 Let's be mindful that the MOU was
17 adopted back in April, and we're already a year
18 past that. There were -- we were trying to
19 capture things in that MOU in terms of trying to
20 determine when we have a meaningful opportunity
21 to compete, when is the marketplace open, what
22 kind of assessments will we be able to make?
23 And certainly that's how the 90 percent test, as
24 it's been referred to, was included in the MOU
25 at that time. Do we have additional indicators

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1 since that time? Yes, that's what this
2 Commission's been all about in the -- in its
3 constant assessment -- assessment and
4 reassessment of Southwestern Bell's opening of
5 the local marketplace. And it's been most
6 recently from affirmed in the comments that were
7 filed by this Commission on the 26th, as
8 approved by the Commissioners themselves on the
9 24th and the statements that they made in
10 support of that finding and determination.

11 Certainly, AT&T's filings were
12 made prior to that time. Really what review
13 we're about now is to add, delete, or modify
14 whether applicable benchmark standards should be
15 modified or replaced by parity standards and
16 whether to move a classification of a measure to
17 high, medium, low, or diagnostic, whether Tier 1
18 or Tier 2.

19 The suggestions that I've heard
20 from AT&T, I don't see that those are included
21 within what we're about here in the six-month
22 review. Does that mean that they don't have
23 value? I don't know at this point. Does that
24 mean that Southwestern Bell won't discuss the
25 merits of the proposals? No, that's not true.

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1 There's a provision later in that
2 same paragraph of the T2A that talks about any
3 changes to existing performance measurements in
4 this remedy plan shall be by mutual agreement of
5 the parties, and if necessary, with respect to
6 new measures and their appropriate
7 classification by arbitration. But, again, a
8 strict reading of that would say that these
9 proposals that we've just heard of are not
10 contemplated within the T2A, and then, it -- you
11 know, the T2A goes on to talk about that no
12 later than two years after Southwestern Bell
13 receives 271 relief that the intention is to
14 reduce the number of measurements by 50 percent
15 so that understandably, that's not what we're
16 about here today.

17 But what we will be doing over the
18 next several days is giving a hard, focused look
19 at these measurements and not looking at a gross
20 percentage number as to whether or not
21 Southwestern Bell has succeeded or failed in
22 opening the local market but doing as this
23 Commission and its staff has done already, and
24 that is to look beyond the percentages, look
25 beyond the numbers, and look at the data itself,

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1 and look at the amount of disaggregation and
2 then determine really what kind of performance
3 has Southwestern Bell been providing? Now --

4 And let me also put in context that
5 these other gentlemen from Southwestern Bell
6 wouldn't talk about this, but I've got to
7 recognize that AT&T, who has been the most
8 outspoken party during this entire process, and
9 has been brokering this issue on behalf of
10 itself and others, is not a party. And
11 Commission has just recognized that this
12 morning. It is not a party to the T2A, and the
13 T2A has been out there since last October of
14 last year. And, yes, we understand that in
15 AT&T's April 17th filing and its arbitration
16 proceeding that it does intend and contemplate
17 to take Attachment 17 with changes that would
18 come out of this collaborative -- this workshop.

19 But, for now, AT&T simply is not a
20 party to it. But, again, let's be appreciative
21 of that and understand that with respect to the
22 percentages what we're looking at, the numbers
23 that we're looking at, and the positions of AT&T
24 with respect to what its interest may be in
25 developing Attachment 17 and imposing

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1 Southwestern Bell's 271 entry.

2 Let me let Mr. Dysart and
3 Mr. Berringer talk about both this concept of
4 backsliding. Let's put that in context.
5 They're also prepared to talk about the improved
6 large results and to talk about the integrity of
7 our data, as well as to talk about the
8 operations and the significant resources that
9 Southwestern Bell has put to bear over the last
10 year since the MOU was originally adopted to
11 permitting an open and competitive market.

12 MR. DYSART: This is Randy Dysart,
13 Southwestern Bell. After the last meeting,
14 Mr. Cowlishaw promised that I missed a good
15 presentation, and I would just like for him to
16 know that I've been waiting with baited breath
17 for this moment.

18 (Laughter)

19 MR. DYSART: I really kind of
20 don't know where to start. So I thought a lot
21 about this issue of backsliding and what it
22 really means to backslide. So I opened up my
23 friend, Mr. Webster, and took a look at it, and
24 it had a lot of religious implications. And I
25 don't think that's what we're talking about

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1 here, although we might have a better agreement
2 on it if we did.

3 But I guess reading the definition
4 it talked about morals and such, and I want to
5 relate that to -- in the process we're in is a
6 commitment, I think, and I guess when it says
7 that Southwestern Bell is backsliding, to me
8 what they're saying is that we lack the
9 commitment to provide the CLECs an opportunity
10 to compete and have slid backwards in that and
11 have regressed. And I don't believe that is
12 true. I think from what you can see in the room
13 today, if you look around, you see a lot of
14 Southwestern Bell people. In fact, one might
15 have thought we tried to dominate the room so no
16 other opposition could appear here today, and
17 that's really not the case. But I think it
18 reflects the commitment that Southwestern Bell
19 has to provide -- to bring to this table the
20 resources to talk about these measurements and
21 to get these measurements right, to consider the
22 information and the recommendations that the
23 CLECs have made, and also to try to refine these
24 to get these measurements correct so that we
25 have a good set going forward.

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1 And I believe that's commitment.
2 We also have plans, and currently have added
3 over 200 LOC reps in the month of March. We
4 have plans to add 310 more by the end of year.
5 That's commitment to the process. In addition,
6 there's going to be 28 additional first-line
7 supervisors added to -- for various things, and
8 two area managers. And, I believe, again, that
9 reflects the commitment that Southwestern Bell
10 has to this process. So I don't believe that is
11 backsliding.
12 Just in the performance
13 measurements group, which started, gosh, back
14 when Mr. Cowlshaw and I were doing the
15 mega-arbitration, whether it was just me, we're
16 adding 20 additional people that will over --
17 approximately double the resources we have
18 dedicated just to performance measurements and
19 to trying to isolate these significant issues.
20 And I believe that reflects commitment.
21 In addition, early in the year,
22 although we have continually been trying to
23 improve the processes and look at things, we
24 formed a process improvement team. Now, it's
25 not called the PIT team, as we so often come up

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1 with acronyms, but these guys are made up of LOC
2 representatives, operations representatives, we
3 have performance measurement people on there.
4 And their goal is to take these troublesome
5 areas that we've seen that we've missed three
6 consecutive months, the Tier 2 particularly, and
7 try to figure out the problem and get those
8 problems corrected. And I think you can see a
9 lot of the results of that commitment and that
10 time on March data.
11 I think it's also important to
12 note what the purpose of the PMS are. I see PMS
13 as two-fold basically. It's a tool to assess
14 our performance obviously. It's also a tool for
15 improvement, and that's what we're using it for.
16 It can't be used solely to say, "Yes, you're
17 performing. No, you're not." You have to dig
18 deeper into the underlying data. You have to
19 recognize and get your hands dirty and get dirty
20 in the data to see what this is going on.
21 And AT&T's presentation, although
22 I can't argue with the numbers, it's not down
23 and dirty into the data, to look behind the data
24 to see what is causing those issues. You know,
25 we talk a lot about Z test and Z statics because

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1 that's what all the -- whether we met or didn't
2 meet. That's what it's all about. And
3 statistics is a wonderful tool to use, but it
4 doesn't tell the whole story. It's not an exact
5 science.
6 Read a statics book and it talks
7 about probabilities; it talks about air rates;
8 it talks about conditions, assumptions you have
9 to make for these things to be true. So it's
10 not an exact science. You have to look beyond
11 that. You have to make sure assumptions are
12 correct. You have to make sure that we're
13 comparing apples to apples.
14 You know, a lot's been talked
15 about this morning about 90 percent, and that's
16 the bogey that we committed to in the MOU. And,
17 again, I can't deny any of that that AT&T has
18 presented. However, I think it's important that
19 we look at the history of the 90 percent and
20 where that came from. I don't know the exact
21 date, but sometime in the spring of 1999, we
22 were talking about an MOU, we were talking about
23 getting ready to file. We just finished the
24 collaborative process which took several months
25 to complete, and we came up with a 90 percent.

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1 Now, there's a couple of key
2 things that should be noted about that 90
3 percent. At that time, DSL was really not a
4 factor. In fact, there was a provision MOU that
5 DSL measurements would be set 30 days after the
6 arbitration was completed, and I believe it was
7 the Covad/Rhythms arbitration. And that didn't
8 happen until later in the year. So that's a new
9 service.
10 We also had IDSL was not really
11 used significantly over BRI loops, which is
12 another problem area that we had. So taking
13 into consideration IDSL and DSL that had not
14 been not necessarily contemplated, because if
15 you recall throughout the proceedings, you know,
16 we had a party. And there was no data CLECs
17 there to talk about DSL. I don't believe that
18 they weren't invited, but they just weren't
19 there.
20 So we had limited expertise on
21 those products at the time we were developing
22 these performance measurements, as was very well
23 recognized in the MOU. A couple of problems
24 that we recognize at least out of the last
25 session we had I guess April 13th, the impact of

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1 line sharing for DSL. Currently, Southwestern
2 Bell utilizes line sharing. At this point the
3 CLECs don't, but as of May they will have that
4 opportunity.
5 So it's not really an apples to
6 apples comparison. You look at one of our
7 biggest problems that we have, missed due dates
8 due to lack of facilities. Over 60 percent of
9 our missed due dates are due to that, that fact.
10 So in a line stream environment for the CLECs
11 that use line sharing, that won't be a huge
12 issue for them, and it was my understanding that
13 at the last DSL workshop just the other day that
14 it was confirmed that CLECs intended to use
15 significant amounts of line sharing on that.
16 And those were issues that the
17 data CLECs brought at our last session which
18 indicates the difference that we have currently,
19 and that's a big issue that goes into this 90
20 percent. Also, IDSL, back when we initially
21 looked at the system. The ISDN for a BRI loop
22 back in the mega-arb and 1997, that wasn't
23 contemplated, and that's what the current
24 business rules and performance is based on is
25 that mega-arbitration. And if you go a little

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1 deeper, go to the performance looking behind the
2 numbers, you'll find that for Southwestern Bell,
3 provisioning and BRI service, it takes
4 approximately 8.75 to 8.85 days to compare the
5 provision of a CLEC that's 5.6 days. One would
6 think 1.25 days quicker, it's obviously Tier 1
7 when you look at that particular time, business
8 rules for that, the CLEC can ask for a three day
9 interval. Three day interval compared to
10 Southwestern Bell's five to ten day interval
11 that we offer, it's not surprising that we have
12 no way of meeting that 20/10 percent within
13 three days nor missed due dates.
14 In addition, the use of IDSL over
15 the -- tend to cause a trouble report. So I
16 think that's reflected in our trouble report
17 rate. It's a new service, and it's over using
18 an older technology like ISDN.
19 Now, if you take that into
20 consideration -- and let's just look at February
21 data, for example. If you take that into
22 consideration, and let's assume for a minute
23 that we go back to the days of the old MOU,
24 which doesn't seem like a long time ago, but in
25 today's technology, six months can be six years,

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1 we look at February data. If we take out DSL
2 measures, IDSL measures and the current measures
3 that we have for 114.1, which are counted in
4 some of Southwestern Bell's data as being a Tier
5 2, you take those out for February leaving two
6 out of three, Southwestern Bell actually for the
7 market area was 90.6 percent.
8 You do that same calculation for
9 March for performance improved, it's 91.5
10 percent. That's meeting two out of three
11 months. So I think that's important to note
12 that backsliding is going back on some agreement
13 you had previously. And these issues weren't an
14 issue at that time.
15 MR. SRINIVASA: You say that the
16 90.6 percent, is that on a disaggregated basis
17 or is it statewide?
18 MR. DYSART: It's on the
19 disaggregated basis.
20 MR. SRINIVASA: If you aggregate
21 it Texas statewide?
22 MR. DYSART: I believe if you
23 aggregate Texas statewide for February, it's
24 around 87 percent, and for March it's around 90
25 percent even.

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1 MR. SRINIVASA: But the DSL and
2 IDSL --
3 MR. DYSART: Out. Now, you know,
4 I'd like to highlight some positives of the
5 March performance that I think indicates that
6 Southwestern Bell obviously is not backsliding.
7 We have shown significant improvements in
8 several categories. This is on aggregate data,
9 by the way. Measurement 5-06, file switch
10 board, we improve. We're at 94.7 percent in
11 March and improve from 75.9 percent in February.
12 7.01 LEX mechanized completions, 95.5 percent
13 which improved from 92.9 percent. And just a
14 note, EDI is much higher than that. It's like
15 97.7 percent in March.
16 Billing completeness, a measure
17 which we have always felt we've provided very
18 good performance but sample sizes were so large
19 that the Z static becomes so sensitive for you
20 statisticians out there, that it's hard --
21 difficult to me, but we met that this month, 99
22 percent improved from 98.3 percent.
23 Flex flow through, which has been
24 an issue, we improved to 91.7 percent from 873
25 percent. I-10s and 3512 for UNI combinations,